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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,277	03/23/2001	Gholam A. Peyman	41441	4578

1609 7590 05/20/2003

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.  
1300 19TH STREET, N.W.  
SUITE 600  
WASHINGTON,, DC 20036

EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/815,277

Applicant(s)

Peyman

Examiner

J. Shay

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on February 19, 2003.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-15, 17-24, 23-35 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-15, 17-21 & 23-35 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9, 10, 12, 13, 21, 23, 25-27, 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites no structure. In claim 27, it is unclear what further structure of the laser is to be inferred by reciting the particular portion of the corneal surface the laser is to act on. Claims 9, 10, 12, 13, 21, 23, 33 and 34 merely recite the use of a particular structure, thus what further manipulative aspect of the method is intended to be specified is unclear.

Claims 1-4, 7-13, 17-19, 31, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Neeffe and Simon. Bille et al ('586) teach a method of forming a pocket in the stroma using an ultrashort pulse laser. Simon teaches forming an intrastromal pocket and inserting a gel which is then allowed to set and can then be adjusted. Neeffe teaches adjusting corneal curvature using a mold. It would have been obvious to the artisan of ordinary skill to employ the laser method of Bille et al in the method of Simon, since this could form the intrastromal pocket much more precisely than the mechanical device of Simon and will not accidentally perforate the lamellae; or to employ the implant method of Simon in the method of Bille et al ('586), since this would provide an adjustable correction, as taught by Simon, and to irradiate the gel to expand or contract the gel, since this would enable adjustment of astigmatism, and to set the gel chemically since this is equivalent to cross linking by irradiation and provides no unexpected result; to employ a mold in the method of Bille et al ('586) or Simon since this would be more precise and less cumbersome than the manual massage

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method of Simon for the removal of excess gel; and to form the pocket about one third the distance from the surface, since this is not critical and provides no unexpected result thus producing a method such as claimed.

Claims 1, 4-6, 14, 15, and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Neefe, L'Esperance, Jr. ('913) and Simon. Bille et al ('586) teach a method of forming a pocket in the stroma using an ultrashort pulse laser. Simon teaches forming an intrastromal pocket and inserting a gel which is then allowed to set and can then be adjusted. Neefe teaches adjusting corneal curvature using a mold. L'Esperance, Jr. ('913) teaches ablating the corneal surface with an excimer laser to provide optical correction. It would have been obvious to the artisan of ordinary skill to employ the laser of Bille et al in the method of Simon, since this could form the intrastromal pocket much more precisely than the mechanical device of Simon and will not accidentally perforate the lamellae; or to employ the implant of Simon in the method of Bille et al ('586), since this would provide an adjustable correction, as taught by Simon, and to irradiate the corneal surface with an excimer laser, as taught by L'Esperance ('913), since this would enable adjustment of astigmatism, and to employ a mold in the method of Bille et al ('586) or Simon for since this would be more precise and less cumbersome than the manual message method of Simon for the removal of excess gel thus producing a method such as claimed.

Claims 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with L'Esperance, Jr. ('913) and Simon. Bille et al teach a method of forming a pocket in the stroma using an ultrashort pulse laser. Simon teaches forming an intrastromal pocket and inserting a gel which is then allowed to set and can then be adjusted.

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L'Esperance, Jr. ('913) teaches adjusting corneal curvature using an excimer laser. It would have been obvious to the artisan of ordinary skill to employ the laser of Bille et al in the method of Simon, since this could form the intrastromal pocket much more precisely than the mechanical device of Simon and will not accidentally perforate the lamellae; or the employ the implant of Simon in the method of Bille et al ('586), since this would provide an adjustable correction, as taught by Simon, and to irradiate the corneal surface with an excimer laser, as taught by L'Esperance ('913), since this would enable adjustment of astigmatism, thus producing a method such as claimed.

Claims 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon and L'Esperance, Jr. ('913). The teachings of L'Esperance, Jr. ('913), Simon, and Bille et al ('586) are substantially as set forth above. It would have been obvious to the artisan of ordinary skill to assemble these elements into a kit, since this would enable the performance of the obvious method as set forth above and because the elements are functionally unrelated as claimed; and to form the optical element as a ring, since this is not critical and is the desired configuration of Simon, thus producing a kit such as claimed.

Applicant's arguments with respect to claims 1-15, 17-21, and 23-35 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Shay whose telephone number is (703) 308-2215. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0944.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Shay/DI

May 6, 2003

A handwritten signature in black ink, appearing to read 'David M. Shay', is written over a circular stamp.

DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330